

111TH CONGRESS
1ST SESSION

S. 1236

To amend title XVIII of the Social Security Act to transition to the use of metropolitan statistical areas as fee schedule areas for the physician fee schedule in California under the Medicare program.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 2009

Mrs. FEINSTEIN (for herself and Mrs. BOXER) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to transition to the use of metropolitan statistical areas as fee schedule areas for the physician fee schedule in California under the Medicare program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “GPCI Justice Act of
5 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) From 1966 through 1991, the Medicare
2 program paid physicians based on what they charged
3 for services. The Omnibus Reconciliation Act of
4 1989 required the establishment of a national Medi-
5 care physician fee schedule, which was implemented
6 in 1992, replacing the charge-based system.

7 (2) The Medicare physician fee schedule cur-
8 rently includes more than 7,000 services together
9 with their corresponding payment rates. In addition,
10 each service on the fee schedule has three relative
11 value units (RVUs) that correspond to the three
12 physician payment components of physician work,
13 practice expense, and malpractice expense.

14 (3)(A) Each geographically adjusted RVU
15 measures the relative costliness of providing a par-
16 ticular service in a particular location referred to as
17 a locality. Physician payment localities are primarily
18 consolidations of the carrier-defined localities that
19 were established in 1966.

20 (B) When physician payment localities were re-
21 designated in 1997, the Administrator of the Cen-
22 ters for Medicare & Medicaid Services acknowledged
23 that the new payment locality configuration had not
24 been established on a consistent geographic basis.
25 Some were based on zip codes or Metropolitan Sta-

1 tistical Areas (MSAs) while others were based on po-
2 litical boundaries, such as cities, counties, or States.

3 (C) The Medicare program has not revised the
4 geographic boundaries of the physician payment lo-
5 calities since the 1997 revision.

6 (4) Medicare's geographic adjustment for a par-
7 ticular physician payment locality is determined
8 using three GPCIs (Geographic Practice Cost Indi-
9 ces) that also correspond to the three Medicare phy-
10 sician payment components of physician work, prac-
11 tice expense, and malpractice expense.

12 (5) The major data source used in calculating
13 the GPCIs is the decennial census which provides
14 new data only once every 10 years.

15 (6) This system of geographic payment designa-
16 tion has resulted in more than half of the current
17 physician payment localities having counties within
18 them with a large payment difference of 5 percent
19 or more. A disproportionate number of these under-
20 paid counties are located in California, Georgia,
21 Minnesota, Ohio, and Virginia.

22 (7) For purposes of payment under the Medi-
23 care program, hospitals are organized and reim-
24 bursed for geographic costs according to MSAs.

1 (8) Studies by the Medicare Payment Advisory
 2 Commission (MedPAC) in 2007, the Government
 3 Accountability Office (GAO) in 2007, the Urban In-
 4 stitute in 2008, and Acumen LLC in 2008 have all
 5 documented this physician GPCI payment discrep-
 6 ancy—specifically that more than half of the current
 7 physician payment localities had counties within
 8 them with a large payment difference (that is, a pay-
 9 ment difference of 5 percent or more) between
 10 GAO’s measure of physicians’ costs and Medicare’s
 11 geographic adjustment for an area. All these objec-
 12 tive studies have recommended changes to the local-
 13 ity system to correct the payment discrepancies.

14 (9) A common recommendation among the
 15 GPCI payment discrepancy studies referred to in
 16 paragraph (8) is to eliminate the county-based local-
 17 ity and replace it with one determined by Metropoli-
 18 tan Statistical Area.

19 **SEC. 3. REDESIGNATING THE GEOGRAPHICAL PRACTICE**
 20 **COST INDEX (GPCI) LOCALITIES IN CALI-**
 21 **FORNIA.**

22 (a) IN GENERAL.—Section 1848(e) of the Social Se-
 23 curity Act (42 U.S.C.1395w–4(e)) is amended by adding
 24 at the end the following new paragraph:

1 “(6) TRANSITION TO USE OF MSAS AS FEE
2 SCHEDULE AREAS IN CALIFORNIA.—

3 “(A) IN GENERAL.—

4 “(i) REVISION.—Subject to clause (ii)
5 and notwithstanding the previous provi-
6 sions of this subsection, for services fur-
7 nished on or after January 1, 2010, the
8 Secretary shall revise the fee schedule
9 areas used for payment under this section
10 applicable to the State of California using
11 the Metropolitan Statistical Area (MSA)
12 iterative Geographic Adjustment Factor
13 methodology as follows:

14 “(I) The Secretary shall con-
15 figure the physician fee schedule areas
16 using the Core-Based Statistical
17 Areas—Metropolitan Statistical Areas
18 (each in this paragraph referred to as
19 an ‘MSA’), as defined by the Director
20 of the Office of Management and
21 Budget, as the basis for the fee sched-
22 ule areas. The Secretary shall employ
23 an iterative process to transition fee
24 schedule areas. First, the Secretary
25 shall list all MSAs within the State by

1 Geographic Adjustment Factor de-
2 scribed in paragraph (2) (in this para-
3 graph referred to as a ‘GAF’) in de-
4 scending order. In the first iteration,
5 the Secretary shall compare the GAF
6 of the highest cost MSA in the State
7 to the weighted-average GAF of the
8 group of remaining MSAs in the
9 State. If the ratio of the GAF of the
10 highest cost MSA to the weighted-av-
11 erage GAF of the rest of State is 1.05
12 or greater then the highest cost MSA
13 becomes a separate fee schedule area.

14 “(II) In the next iteration, the
15 Secretary shall compare the MSA of
16 the second-highest GAF to the weight-
17 ed-average GAF of the group of re-
18 maining MSAs. If the ratio of the sec-
19 ond-highest MSA’s GAF to the
20 weighted-average of the remaining
21 lower cost MSAs is 1.05 or greater,
22 the second-highest MSA becomes a
23 separate fee schedule area. The
24 iterative process continues until the
25 ratio of the GAF of the highest-cost

1 remaining MSA to the weighted-aver-
2 age of the remaining lower-cost MSAs
3 is less than 1.05, and the remaining
4 group of lower cost MSAs form a sin-
5 gle fee schedule area, If two MSAs
6 have identical GAFs, they shall be
7 combined in the iterative comparison.

8 “(ii) TRANSITION.—For services fur-
9 nished on or after January 1, 2010, in the
10 State of California, after calculating the
11 work, practice expense, and malpractice ge-
12 ographic indices described in clauses (i),
13 (ii), and (iii) of paragraph (1)(A) that
14 would otherwise apply through application
15 of this paragraph, the Secretary shall in-
16 crease any such index to the county-based
17 fee schedule area value on December 31,
18 2009, if such index would otherwise be less
19 than the value on January 1, 2010.

20 “(B) SUBSEQUENT REVISIONS.—

21 “(i) PERIODIC REVIEW AND ADJUST-
22 MENTS IN FEE SCHEDULE AREAS.—Subse-
23 quent to the process outlined in paragraph
24 (1)(C), not less often than every three
25 years, the Secretary shall review and up-

1 date the California Rest-of-State fee sched-
 2 ule area using MSAs as defined by the Di-
 3 rector of the Office of Management and
 4 Budget and the iterative methodology de-
 5 scribed in subparagraph (A)(i).

6 “(ii) LINK WITH GEOGRAPHIC INDEX
 7 DATA REVISION.—The revision described in
 8 clause (i) shall be made effective concur-
 9 rently with the application of the periodic
 10 review of the adjustment factors required
 11 under paragraph (1)(C) for California for
 12 2012 and subsequent periods. Upon re-
 13 quest, the Secretary shall make available
 14 to the public any county-level or MSA de-
 15 rived data used to calculate the geographic
 16 practice cost index.

17 “(C) REFERENCES TO FEE SCHEDULE
 18 AREAS.—Effective for services furnished on or
 19 after January 1, 2010, for the State of Cali-
 20 fornia, any reference in this section to a fee
 21 schedule area shall be deemed a reference to an
 22 MSA in the State.”.

23 (b) CONFORMING AMENDMENT TO DEFINITION OF
 24 FEE SCHEDULE AREA.—Section 1848(j)(2) of the Social
 25 Security Act (42 U.S.C. 1395w(j)(2)) is amended by strik-

1 ing “The term” and inserting “Except as provided in sub-
2 section (e)(6)(C), the term”.

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